

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 26, 2005

GSBCA 16694-RELO

In the Matter of JOANNE HUGHES

Joanne Hughes, Sacramento, CA, Claimant.

Denise Hearne, Office of Counsel, Defense Contract Management Agency, Northern California, French Camp, CA, appearing for Department of Defense.

DeGRAFF, Board Judge.

An agency cannot reimburse an employee for real estate sales transaction expenses which are not customarily paid. In addition, an agency cannot reimburse an employee for the expenses of purchasing a house not located at the new duty station or a house purchased in connection with a transfer which is not in the interest of the Government.

Background

In 1997, Joanne Hughes was employed by the National Aeronautics and Space Administration in Oakland, California, where she owned a home. In August 1997, Ms. Hughes accepted a position with the Department of Defense (DoD) on Johnston Island. In September 2002, Ms. Hughes learned she would not have return rights to Oakland, and she accepted a position with DoD in Kuwait.

In April 2004, DoD transferred Ms. Hughes from Kuwait to San Diego, California. San Diego is approximately 490 miles from Oakland. This transfer was in the interest of the Government and DoD authorized Ms. Hughes to incur reimbursable real estate transaction expenses in connection with the transfer. In May 2004, Ms. Hughes reported for duty in San

Diego and signed a contract to sell her house in Oakland. The sales transaction closed in July 2004, and in connection with the sale, she gave the purchaser a \$5500 credit toward his closing costs, which is shown on the settlement statement as a cost she incurred.

Ms. Hughes did not want to remain in San Diego and she began looking for another position and a house to purchase. In August 2004, she entered into a contract to purchase a house in Sacramento, California, which is approximately 505 miles from San Diego. In mid-September, DoD offered Ms. Hughes a position near Sacramento and a few days later she closed on the purchase of her house there. In connection with the purchase, she incurred settlement costs of approximately \$4600. DoD told Ms. Hughes the transfer to Sacramento would be at her expense, and DoD did not authorize her to incur any reimbursable relocation expenses in connection with the transfer.

Ms. Hughes submitted a claim to DoD for both the \$5500 credit she gave the purchaser for closing costs when she sold her house in Oakland, and the approximately \$4600 of closing costs she incurred when she purchased her house in Sacramento. DoD denied the claim and Ms. Hughes asked us to review DoD's decision.

Discussion

When an employee transfers in the interest of the Government between posts of duty within the United States, the employee is entitled to be reimbursed for expenses required to be paid by the employee in connection with the sale of a residence at the old official duty station and in connection with the purchase of a residence at the new official station. When an employee transfers in the interest of the Government from a post of duty outside the United States to an official station within the United States, the employee is entitled to be reimbursed for expenses required to be paid by the employee in connection with the sale of a residence at the previous official duty station in the United States and in connection with the purchase of a residence at the new official station, so long as the new official station is not the same duty station from which the employee originally transferred and so long as the real estate transactions occur after the employee is officially notified that his or her return to the United States will not be to the same duty station from which the employee originally transferred. 5 U.S.C. § 5724a(d) (2000).

In addition to the general requirements set out in the statute, the Federal Travel Regulation (FTR), which applies to all federal civilian employees, and the Joint Travel Regulations (JTR), which supplement the FTR for federal civilian employees of DoD, contain requirements which must be met before an agency can reimburse a particular expense. 41 CFR pt. 302-11 (2004) (FTR pt. 302-11); JTR C14002. We examine the expenses Ms. Hughes incurred in light of these principles.

The sale of the Oakland house

Ms. Hughes transferred from a post of duty outside the United States to a new official station (San Diego) which was different from the official station from which she originally transferred (Oakland). She sold her Oakland house after she was officially notified that her return to the United States would not be to Oakland. Thus, she meets the general requirements set out in the statute for being reimbursed for her real estate sales transaction expenses.

In support of its decision to deny Ms. Hughes' claim for the \$5500 credit she gave her purchaser for his closing costs, DoD refers to our decision in *Estefanie B. Duncan*, GSBCA 16239-RELO, 04-1 BCA ¶ 32,449 (2003). There, the issue was whether an agency ought to reimburse an employee for a claimed closing cost in connection with the purchase of a house when the settlement statement showed the cost had been paid by the seller of the property. The rule we used to resolve *Duncan* has no applicability to Ms. Hughes, because her settlement statement clearly shows she incurred the \$5500 expense she claims.

Ms. Hughes' claim for the \$5500 credit she gave the purchaser toward his closing costs is resolved by the regulations in effect when she reported to her new duty station in San Diego. These regulations require DoD to reimburse Ms. Hughes for certain types of expenses provided they were customarily paid by the seller of a residence at the old duty station. FTR 302-11.200. The burden is on the claimant to establish that payment of an expense was customary in the area at the time in question. *Kerry M. Kennedy*, GSBCA 16540-RELO, 05-1 BCA ¶ 32,877.

In response to a question from DoD, Ms. Hughes said she did not believe the credit she gave was a customary practice in the Oakland area in mid-2004, and she could not produce a letter from her real estate agent saying it was customary. Because Ms. Hughes cannot show it was customary for a seller in Oakland in mid-2004 to give a purchaser a \$5500 credit for closing costs, she is not eligible to be reimbursed for the amount of the credit.

The purchase of the Sacramento house

The real estate transaction expenses Ms. Hughes incurred when she purchased her house in Sacramento cannot be reimbursed as expenses incurred in connection with her transfer to San Diego. The statute allows reimbursement of real estate transaction purchase expenses only if an employee purchases a residence at the new official station. Ms. Hughes, however, did not purchase a house at her new duty station in San Diego. Instead, she purchased a house in Sacramento, which is approximately 505 miles from San Diego. Thus,

the expenses she incurred in purchasing the house are not reimbursable as expenses of her transfer to San Diego.

Ms. Hughes cannot be reimbursed for her real estate purchase transaction expenses as expenses incurred in connection with her transfer to Sacramento. The statute permits reimbursement of such expenses only when an employee transfers in the interest of the Government. DoD's regulations presume it is not in the Government's interest for an employee to transfer within DoD more than once in any twelve-month period, and DoD will not reimburse an employee for more than one transfer in such a period unless it is clear that more than one transfer was in the Government's interest. JTR C5005-C. Ms. Hughes transferred to Sacramento to satisfy her interest in leaving San Diego, and not in the agency's interest. Therefore, the expenses she incurred in purchasing the house in Sacramento are not reimbursable as expenses of her transfer there.

Decision

The claim is denied.

MARTHA H. DeGRAFF
Board Judge